



**Division of Criminal
Justice Services**

**New York State Division of Criminal Justice Services
Office of Probation and Correctional Alternatives
Defender Based Advocacy (DBA) Standards
2025 Revision**

Kathy Hochul, Governor

Rossana Rosado, Commissioner

Matthew Charton, Deputy Commissioner and Director

Table of Contents

- I. Introduction:
- II. Statutory and Regulatory Authority:
- III. Administrative Standards
 - A. General
 - B. Data Collection and Reporting
 - C. Training
 - D. Collaboration and Education
 - E. Revision of Standards:
- IV. Applicability:
- V. Program Goal:
- VI. Program Objectives:
- VII. Procedural Standards
 - A. Eligibility Criteria
 - B. Screen, Intake, Assessment and Evaluate
 - C. Client Specific Plan
 - D. Disposition
 - E. Competency with Diverse Populations
- VIII. Ethical Standards:
- X. Confidentiality

Forward

Defender Based Advocacy (DBA) programs provide courts, defense attorneys, and district attorneys with relevant information pertaining to a defendant that is considered in plea and sentencing decisions. This information is contained in and conveyed through a Client Specific Plan (CSP); a written report, prepared by a DBA program, that provides key decisionmakers with contextual factors, both present and historic, that have affected a defendant's life. The CSP uses several sources to highlight areas of a defendant's life including but not limited to, family background, educational and vocational prospects, employment, substance use/abuse, mental and physical health, sources of trauma, social relationships, and housing. Such information is obtained through interviews, screenings, and assessments of defendants, review of available collateral information (e.g. treatment records, criminal history, educational attainment, evidence of employment, etc.). The CSP further seeks to identify factors that would weigh in favor of a court disposition where a defendant remains in the community in lieu of incarceration or detention. Additionally, CSPs may also advocate for or result in the reduction of a sentence of incarceration when a defendant's likelihood of remaining in the community is unlikely or not allowable.

When a DBA program is unable or incapable of obtaining the information necessary for the CSP, such DBA program shall facilitate the release of information or referrals to agencies qualified to do so. Based on the information gathered by the DBA program, and presented in the CSP, the DBA program will propose a plea and/or sentence that considers factors such as: the need for victim restitution, the presence of support in the defendant's life, employment status, general health and well-being of the defendant, and avoidance of future misconduct

Finally, DCJS would like to acknowledge and thank the following agencies/programs for their assistance in the 2025 Defender Based Advocacy Standards revisions: the Center for

Community Alternatives (CCA); the Legal Aid Society of Suffolk County, inc.; the Nassau Alternatives Advocacy Program; and the Osborne Association.

Introduction

The Division of Criminal Justice Services (DCJS) Office of Probation and Correctional Alternatives (OPCA) prepared these Standards for DBA programs funded by DCJS. These Standards will guide practitioners in the delivery of their services, as well as refine other essential program areas to meet the needs of their clients. DBA standards are contractually required to be followed by DCJS funded DBA programs. Ultimately, these Standards assist with establishing greater uniformity within the DBA field, while allowing practitioners the flexibility to adapt to real-time system changes.

These Standards are issued with the intent that they continue to be evaluated by Community Correction Professionals and regularly reconsidered to ensure that they advance the highest quality of services to the people of New York State.

I) Statutory Authority*(all laws referenced within are attached in Appendix A)

New York State Executive Law (EL) §240¹ establishes OPCA as an office within DCJS and provides that the head of OPCA shall be the Director of OPCA. Such section further provides that the Director, in consultation with the Commissioner of DCJS, shall coordinate and make recommendations relating to the type and nature of alternatives to incarceration (ATI) programs needed to reduce incarceration where the purpose of such incarceration can be adequately

¹ [Laws of NY](#) is a link to NYS Consolidated Laws

served by alternative programs and shall work with local probation departments and the Commissioner to enhance and develop probation services and alternative to incarceration programs throughout the state. Further, EL §243(2)² authorizes OPCA to exercise general supervision over the utilization of correctional alternative programs throughout the state.

Administrative Standards

General

Each DBA program shall:

1. Adhere to the Standards prescribed herein, applicable laws, court or releasing authority orders, and other rules and regulations, where applicable.
2. Operate in such a manner that all defendants and courts/releasing authorities within their jurisdiction may be effectively served.
3. Maintain neutrality and independence from both the prosecution and defense (where not serving as a defense attorney), so that objective information can be provided to the courts to bring about more informed sentencing decisions; and
4. Maintain policies and procedures including, but not limited to eligibility and exclusion criteria, the CSP, individual defendant monitoring, notification, and communication with the court/releasing authority, and referring individuals to external providers for necessary services.

Data Collection and Reporting

Each DBA program shall:

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1. Develop and maintain internal information systems that allow for the ongoing monitoring of program outcomes.
2. Submit data and other necessary information to DCJS as required or directed.
3. Develop and conduct periodic quality assurance reviews of program practices to determine their applicability and effectiveness at reaching the objectives herein.
4. Immediately notify DCJS of public incidents involving its current participants or staff while participating in the program. Examples of such incidents may include but are not limited to one that has been new arrests for homicide, assault of law enforcement or emergency services personnel, kidnapping, one that has been the victim of homicide resulting in case closure, or other high-profile incident as identified by the agency. Providers are encouraged to contact their OPCA Representative to determine if further reporting, investigation or other steps are necessary.

Staff and Training

Each DBA program staff shall:

1. Maintain neutral, objective, and independence from both the prosecution and defense (e.g. an attorney, where not serving as a Defense Attorney on the case or Mitigation Specialist).
2. Ensure that their employees have been sufficiently trained and educated in the duties and responsibilities of their respective program roles.
3. Be timely oriented to these Standards. Additionally, the DBA program shall ensure that employees perform their duties in accord with these Standards, applicable laws, and other governing rules and regulations, and;
4. Strongly encouraged to attend relevant training programs for community corrections professionals provided by DCJS and other applicable entities.

Collaboration and Outreach

DBA programs shall:

1. Ensure that their local criminal justice community is informed about the services they provide. Where feasible, DBA programs are encouraged to initiate training and education opportunities for service providers, criminal justice system stakeholders, and the general public, regarding the services and benefits of DBA programs.
2. Collaborate with the criminal justice community, including local Criminal Justice Advisory Boards, as defined in EL §261(g)³ For purposes of these Standards, “Advisory Board,” means that body established pursuant to EL §261⁴ or a Criminal Justice Coordinating Council, whose members include the Chief Administrative Officer, and a majority of the members set forth in EL §261(2)⁵; and
3. Use these outreach opportunities to ensure that its practices are properly addressing concerns from the community on matters involving the DBA program.

Revision of Standards

OPCA shall periodically review and when necessary, with the assistance of DBA providers, revise these Standards to reflect changes in the law and other informed sources of information.

³ [Laws of NY](#) is a link to NYS Consolidated Laws

⁴ [Laws of NY](#) is a link to NYS Consolidated Laws

⁵ [Laws of NY](#) is a link to NYS Consolidated Laws

The revised Standards will be issued by DCJS OPCA and take effect upon issuance, unless otherwise specified.

Program Goal

DBA, alternative to incarceration programs, funded by DCJS shall be designed to allow individuals to remain connected with their communities and receive necessary services for rehabilitation, while ensuring accountability to the criminal justice system and greater public safety.

Program Objectives

DBA programs shall strive to achieve the following objectives:

1. Educate, through coordinated outreach efforts, potential referral sources, including local Criminal Courts, as to the services provided by the DBA program. Such outreach should emphasize eligibility criteria, availability of behavioral change programs, and applicable outcomes.
2. Reduce unnecessary reliance on detention/incarceration rates at the State and Local levels; and
3. Conduct interviews and, if necessary, professional assessments and/or screenings of eligible program participants.
4. Prepare a CSP to submit to the court on the individual's behalf;
5. Facilitate referrals, client contact, and participation with other agencies involved in providing services to the individual.

6. Provide general monitoring of the individual's system participation and advocate as necessary, while they are involved with the program; and
7. Comply with the reporting requirements, as described in this document.

Procedural Standards

Eligibility Criteria

DBA programs shall:

1. Have clearly defined eligibility criteria.
2. Screen all potentially eligible persons; and
3. Accept individuals for services that have been referred to the DBA program pursuant to the legal authority of the courts or other referring agencies. These agencies may include, but are not limited to, assigned counsel, local probation departments, prosecuting attorneys, and local detention centers.

Screening, Intake, Assessment, and Evaluation

DBA programs shall:

- Use a standardized risk and/or needs assessment tool (as applicable), to assist with the intake processes, making informed recommendations to the court, and to guide case planning processes for those programs providing more intensive services.
- Identify appropriate clients through a well-defined screening and/or interview process that ensures the following:
 - Standardized eligibility criteria are developed and applied uniformly.

- Criteria will not discriminate against potential clients on the basis of age, race, color, gender, religion, creed, national origin, ancestry, marital status, political belief, health condition or impairment, gender identity or sexual orientation.
- Reasonable accommodations shall be made to provide services to individuals with physical and/or mental disabilities and/or language barriers.
- Outreach shall be conducted with stakeholders, including but not limited to, probation and parole departments, local courts, counsel, and community-based organizations to provide equal opportunity for potential clients; and
- Eligibility criteria shall be periodically reviewed and modified, as needed, to reflect changes in the law, rules, regulations, and local practice.

Client-Specific Plan

In preparation of a CSP, DBA programs shall:

- Conference the client's case with the defense attorney and other members of the defense team.
- Conduct in-person interviews with clients in an environment that is conducive to privacy for all parties to maintain confidentiality. For those interviews that are conducted virtually, similar efforts should be made to maintain client confidentiality.
- Ensure that client-signed release forms specify the information requested, the person/agency releasing the information, as well as time period, event, or condition of expiration. When required, HIPPA regulations shall govern.
- Conduct collateral interviews, whenever necessary and relevant, to gather additional information and to verify information.
- When applicable, consult with experts outside their direct field of knowledge to complete specialized evaluations, assessments, and support regarding specific issues.

- Become and remain familiar with all statutorily permissible sentences, dispositions, sanctions, and alternatives to incarceration. The DBA program shall also be familiar with community resources to ensure appropriate programming opportunities and support for clients.
- Prepare a comprehensive CSP containing information that includes: identifying information and demographics, circumstances regarding offense behavior and behavior leading up to the offense (if deemed necessary by defense counsel), family and social histories, medical history - including mental health and physical health, substance abuse/addiction and respective treatment history, culturally relevant factors, educational and employment histories, as well as any additional information deemed relevant to the case circumstances; and
- Prepared in a timely manner, in accord with court requests and deadlines.

Disposition

- A court, in its discretion, pursuant to Criminal Procedure Law (CPL) 400.10⁶ may, before pronouncing sentence, hold one or more pre-sentence conferences in open court or in chambers to resolve any discrepancies between the pre-sentence report or other information the court has received.
- The defendant's or prosecutor's pre-sentence memorandum submitted pursuant to CPL390.40⁷ , can assist the court in its consideration of any matter relevant to the sentence to be pronounced, the DBA program should consult with the defendant's attorney as to its involvement, if any.
- DBA programs shall develop and implement case closing procedures that provide for:

⁶ [Laws of NY](#) is a link to NYS Consolidated Laws

⁷ [Laws of NY](#) is a link to NYS Consolidated Laws

- Timely submission of the CSP; and
- Detailed data collection regarding the case outcome and closing.

Pre-Sentence Memorandum

- DBA programs shall consider whether to prepare a defendant's pre-sentence memorandum as authorized by CPL 390.40⁸ ;
- Such memorandum may include information with respect to any matters described in CPL 390.30⁹ and written statements by others in support of facts alleged in the memorandum may be annexed thereto. The CSP, or portions of it, may be used or serve as an effective pre-sentence memorandum.
- DBA programs shall take the necessary and appropriate steps to ensure a defendant's pre-sentence memoranda, which it prepared, are filed sufficiently in advance of sentencing the court; and
- As CPL 390.40¹⁰ empowers the prosecutor with the ability to file a prosecutor's pre-sentence memorandum which must be served on the defendant's attorney at least ten (10) days prior to the sentencing date, the DBA program shall consult with the defendant's attorney as to the content of any such memorandum.

Competency with Diverse Populations

DBA programs shall:

⁸ [Laws of NY](#) is a link to NYS Consolidated Laws

⁹ [Laws of NY](#) is a link to NYS Consolidated Laws

¹⁰ [Laws of NY](#) is a link to NYS Consolidated Laws

- Develop the awareness, knowledge, and skills necessary to effectively work with clients that reflect diverse cultural, racial, ethnic, and gender populations.
- Use treatment providers and community resources that are sensitive to and effectively work with shared clients of diverse populations.
 - Ensure hiring, training practices, and program services safeguard against discrimination by promoting cultural, racial, gender, and ethnic competency.
 - Minimize language barriers through employing multilingual staff members and/or arranging for language services for clients.
 - Conduct strategic outreach with cultural, racial, gender, and ethnic groups to develop diverse networks of support for clients and staff.

Ethics

DBA programs shall develop and adopt a code of ethics, to be distributed to and followed by all staff. The code of ethics should include, but not be limited to, the following:

- Maintaining objectivity and integrity, respecting the values, attitudes, and opinions of others, providing services in an equitable and appropriate professional relationship.
- Criteria does not discriminate against potential clients on the basis of age, race, color, gender, religion, creed, national origin, ancestry, marital status, political belief, health condition or impairment, gender identity or sexual orientation.
- Adhere to legal codes and accepted moral behaviors which pertain to professional conduct.
- Refrain from engaging in behavior that may give the appearance of impropriety, such as requesting or accepting gifts, or otherwise engaging in inappropriate relationships.
- Immediately disclose any potential or perceived conflict of interest to appropriate designated personnel.

- Undertake the obligation of protecting the privacy of program-involved individuals by maintaining the confidentiality of records and information under control of DBA program staff.

DBA program staff that are employed by a government agency are also subject to the provisions of Article 18 of the General Municipal Law (GML)¹¹ concerning conflicts of interest.

Confidentiality

DBA programs shall maintain the confidentiality of program records:

- Information obtained by DBA programs during the course of services shall remain confidential and shall not be disclosed unless authorized by New York State and/or Federal Law, DCJS contractual agreements and applicable rules and regulations governing program records, including but not limited to medical, drug and alcohol, mental health records and HIV related information (i.e. Health Insurance Portability Accountability Act, 42 USC 290dd-2 and 42 CFR Part 2, Public Health Law Article 27-F and Mental Hygiene Law 33.13 and CPL 390.50)¹² . Any disclosure of DBA program obtained information shall be limited to the minimum information necessary to carry out the purpose of such disclosure.
- DBA programs shall establish a written policy regarding the limited access to an individual's files. Individual files may be maintained virtually or physically. Such policy shall include provisions permitting access, upon request, by the client or their attorney. This policy may provide for appropriate exceptions from disclosure including information

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that has been secured from sources upon a promise of confidentiality of information, which, if disclosed, would endanger the life or safety of any person, or would constitute an unwarranted invasion of personal privacy. This policy shall not deny access by the client and their attorney to any statements made by the client;

- Providers will retain case records (both physically and digitally written) in accord with the *General Retention and Disposition Schedule for New York State Government Records (General Schedule)*. This document can be found online in New York State Archives¹³ or in your DCJS contract Appendix A, STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS
- At the time of the initial interview, the client shall be clearly advised of the potential uses of the information offered and/or secured from treatment providers so that they may make a voluntary decision whether to participate in referred services. Applicable consent forms authorizing release of medical records shall be presented to the client for review and signature, where applicable. Wherever feasible, the client shall execute a criminal justice consent form to facilitate disclosure to elements of the criminal justice system that have made participation in a drug and/or alcohol program a condition of the disposition of any criminal proceeding against the defendant or of the individual's probation, parole or other release from custody. This form allows for the sharing of information about the individual's progress to the prosecuting attorney, the court granting release, probation, or parole officers who are supervising such individuals until final disposition of the client's case.

¹³ <https://www.archives.nysed.gov/records/topic-retention-and-disposition> New York State Archives

- DBA program attorneys, where serving as defense counsel, shall adhere to special rules governing confidentiality of information as contained in Rule 1.6 of the New York Rules of Professional Conduct. Among its provisions, it allows a lawyer to reveal or use confidential information to the extent that they reasonably believe necessary:
 - To prevent reasonably certain death or substantial bodily harm.
 - To prevent the client from committing a crime.
 - To withdraw a written or oral opinion or representation previously given by the lawyer and reasonably believed by them to be relied upon by a third person, where the lawyer has discovered that the opinion or representation was based on materially inaccurate information or is being used to further a crime or fraud; and Where permitted or required under these rules or to comply with other laws or court orders.

- DBA program attorneys must also adhere to the “Rules to Professional Conduct” issued by the Chief Administrator of the Courts in New York State, which have been promulgated as joint rules by the Appellate Division of the Supreme Court.

Where not restricted, the DBA program may disclose information under the following circumstances, subject to any enumerated limitations with respect to release:

- To public health authorities or other appropriate governmental authorities for purposes of reporting child abuse or neglect (See Appendix A 45 CFR §164.512(b)(1)(ii)¹⁴ To a person who may have been exposed to a communicable disease or may otherwise be at

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the risk of contracting or spreading a disease or condition if the covered entity is authorized by law to notify such person, as necessary, in the conduct of a public health intervention (45 CFR §164.512(b)(1)(iv) - p)¹⁵

- To a governmental authority including a social service or protective service agency authorized by law to receive reports of such abuse, neglect, or domestic violence, upon reasonable belief that an individual is a victim of abuse, neglect, or domestic violence. In such cases there must be prompt notification to the individual that a report has been or will be made in certain instances (45 CFR §164.512(c))¹⁶
- For judicial and administrative proceedings subject to specific requirements and limitations, including in response to an order of a court or administrative tribunal in response to a subpoena (See Appendix A 45 CFR §164.512 (e))¹⁷
- For law enforcement purpose to a law enforcement official if certain conditions are met, as applicable (i.e. information sought is relevant and material to a legitimate law enforcement inquiry) (See Appendix A 45 CFR §164.512 (f)(1))¹⁸
- (In response to a law enforcement official's request for information for the purpose of identifying or locating a suspect, a fugitive, material witness, or missing person, certain personal information may be released (See Appendix A 45 CFR §164.512 (f)(2))¹⁹

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¹⁸ [Laws of NY](#) is a link to NYS Consolidated Laws

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- In response to a law enforcement official's request for information about an individual who is or is suspected to be a victim of a crime, in certain instances (See Appendix A 45 CFR §164.512 (f)(3))²⁰
- For reporting a crime in emergencies to alert law enforcement that certain information may be disclosed (See Appendix A 45 CFR §164.512 (f)(6))²¹
- To individuals or agencies designated by the individual upon specific written authority or to other individuals or agencies as recognized by HIPPA Regulations²² ;To prevent or lessen a serious and imminent threat to the safety of an individual or the public, in cases in which DBA staff has specific information leading to a belief that the individual intends to harm law enforcement authorities, particular individuals, or the community at large, the program shall inform the court and/or appropriate law enforcement agency of the nature of the potential harm. Such notification is subject to any restrictions imposed by law (i.e. Public Health Law 2785 governing court authorization for disclosure of confidential HIV related information²³). The program shall disclose only such information as is necessary to fully advise of the nature and source of the potential harm to assisting in locating the individual (45 CFR §164.512(J))²⁴
- No person, public or private agency receiving information from a DBA program may re-disclose such information, except as is necessary to accomplish the purpose for which such information was disclosed by the DBA program. All contracts and written communications between the DBA program and individuals or organizations agreeing to

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²² [Laws of NY](#) is a link to NYS Consolidated Laws

²³ [Laws of NY](#) is a link to NYS Consolidated Laws

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provide supportive services for the custody or care of individuals participating in a DBA program, must contain a non-disclosure clause. This clause shall obligate such individual or organization to adhere to the confidentiality section.

- DBA programs shall develop written policies and procedures governing confidentiality and access to DBA records consistent with relevant laws, rules and regulations, and contractual agreements, and shall designate an appropriate staff person to ensure that staff are familiar with and adhere to these policies and procedures.